IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Marriage of	)	
	)	No. 62702-3-I
GRACE LOUISE AMAN,	)	
	)	
Respondent,	)	
	)	
and	)	
	)	
CRAIG SCOTT AMAN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 1, 2010
	)	

Ellington, J. — Grace and Craig Aman divorced after 15 years of marriage. The trial court divided their property and awarded Grace decreasing amounts of maintenance over 10 years. Craig challenges the property distribution because the court used the value of an investment account as of the time of trial, rather than the time Craig sought to distribute it, and contends the maintenance award was not supported by substantial evidence. We find no abuse of discretion in the court's division of property, and the maintenance award was supported by the evidence. We affirm.

BACKGROUND

Craig and Grace Aman married in 1992. When the parties married, Craig

worked as a firefighter for the City of Seattle and owned and operated a business as a second source of family income. In 1998, Craig sold the business and began working at Philips Health Care as a second job. They adopted a child, Lauren, in 1998, and Grace, who had a history of low paying jobs due to a lack of formal education, stopped working outside the home to care for Lauren full-time.

In 2001, Grace seriously injured her back. Spinal fusion surgery was unsuccessful. Grace's doctor recommended postponing more extensive surgery until less disabling procedures are developed. As a result, Grace's physical activities are substantially limited and it is anticipated she will be limited to part-time employment.

The parties separated in 2007. At that time, Craig continued to work for the fire department and had a second job as a vice president for sales of Medic First Aid. He earned more than $220,000 in combined yearly income. Craig's sales job required that he spend 25 percent of his time in Eugene, Oregon, with additional regular business travel. Craig scheduled this work around his firefighting job, which consisted of a predetermined schedule of periodic 24-hour shifts.

The parties agreed to a parenting plan in which Lauren would reside with Grace the majority of time. Trial of property and maintenance issues took place during four days over June, July and August 2008. Due to time constraints, the court directed counsel to provide closing arguments in writing. The court entered its decision on September 24, 2008, which it memorialized by editing the findings and decree proposed by Grace before trial with numerous interlineations, additions and deletions.

The court ordered Craig to pay maintenance of $6,500 per month for the first two

years, $5,000 per month for the next four years, and then $2,500 per month for the next four years. The parties' house, though listed, had not yet sold, and the court ordered Craig to pay the mortgage until it sold, when, subject to reimbursing him for the mortgage payments, 60 percent of the proceeds would go to Grace and 40 percent to Craig. In addition to disposing of other assets and liabilities, the court ordered that a 401(k) plan in Craig's name valued at $106,301.56 at the time of trial should be divided with Grace receiving $50,000 and the balance going to Craig.

Craig and Grace each immediately filed motions to clarify[1] and reconsider. Craig asked the court to reconsider the property division, the allocation of debt and the maintenance order. Grace moved to attach a spreadsheet that the decree had referenced but had failed to attach, to set minimum proceeds she would receive from the sale of the house, and to preclude reimbursement to Craig for mortgage payments if he lived in the house.

The court denied Craig's motions to reconsider.[2] The court partially granted Grace's motions by ordering only partial reimbursement to Craig for mortgage payments and directing that the spreadsheet would be completed and attached when

[1] We observe here that this approach, which resulted in some confusion below, has also caused difficulty on review. This court is greatly assisted by an oral or memorandum opinion, and/or colloquy with counsel, to elucidate the court's thinking. The parties' arguments on appeal were similarly hindered by the state of the record.

[2] Craig also sought clarification of the characterization of the partial distribution of bonuses he might receive for work completed before the dissolution was complete. The trial court ultimately granted that portion of his motion and he does not challenge the court's ruling in that respect here. Similarly, while Grace also moved to adjust the amount of child support, and the court granted her motion, Craig does not challenge the decree with respect to the child support order.

the house sold.

Craig filed this appeal in December 2008.

Several months later, the house was sold. Grace filed a motion to approve the disbursement calculations. Craig asked the court to adjust the distribution of the 401(k) fund because its value had diminished to $65,301.56. He argued that awarding Grace $50,000 would decrease his share significantly and necessarily result in a property distribution more unbalanced than originally ordered.

The court entered Grace's proposed order, and denied Craig's request to adjust the 401(k) distribution.

Craig appeals the decree, as amended and adjusted by the post-decree orders.

Distribution of the 401(k) Account

Craig challenges the trial court's denial of his request to adjust the method of dividing the 401(k) account because of the diminution in value that occurred between the time of trial and the time when Grace asked the court to approve the final disbursement of the proceeds from the sale of the home. Citing In re Marriage of Knutson,[3] Grace argues the trial court correctly denied the motion because Craig assumed the risk that the value of the account would decrease when he did not distribute the account following the entry of the decree. We agree with Grace.

In a dissolution action, all property, both community and separate, is before the court for distribution.[4] When distributing the property, the court considers, among other

[3] 114 Wn. App. 866, 60 P.3d 681 (2003).

[4] Friedlander v. Friedlander, 80 Wn.2d 293, 305, 494 P.2d 208 (1972); In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

factors, (1) the nature and extent of community property, (2) the nature and extent of separate property, (3) the duration of the marriage, and (4) the economic circumstances of the parties.[5] The court has broad discretion to award all the property brought before it in a just and equitable fashion, and will be reversed only upon a showing of manifest abuse of discretion.[6] A manifest abuse of discretion occurs when the court bases its decision on untenable grounds.[7]

In Knutson, this court held that a drop in market value prior to entry of a qualified domestic relations order did not justify the trial court's modification of a decree that unambiguously awarded a sum certain amount from a 401(k) account.[8] While Craig is correct that Knutson is not controlling here because it involved a motion to vacate rather than a request for adjustment, Knutson is persuasive authority for the trial court's approach. Because the decree unambiguously ordered that Grace receive the fixed sum of $50,000 from the account and because Craig had sole control over the account and simply elected not to implement the decree at the time it was entered, we find no abuse of discretion in the court's refusal to adjust its ruling later.

Maintenance

Craig makes five assignments of error regarding the maintenance award.[9] A trial

[5] RCW 26.09.080.

[6] In re Marriage of Brewer, 137 Wn.2d 756, 769, 976 P.2d 102 (1999);

[7] In re Marriage of Muhammad, 153 Wn.2d 795, 803, 108 P.3d 779 (2005).

[8] Knutson, 114 Wn. App. at 873–74.

[9] With respect to these assignments of error, Grace argues preliminarily that we should reject Craig's claims as raised for the first time on appeal. RAP 2.5. As Craig contends in his reply, however, the trial court followed a procedure in which it heard no oral argument, rendered no oral or memorandum ruling, and simply edited the findings

court may award maintenance payments in a dissolution proceeding after considering all relevant factors such as need and ability to pay.[10] We review maintenance awards for an abuse of discretion.[11]

Craig first contends that the court could not award maintenance without specific evidence about how much it would cost Grace to live in Arizona, where she planned to move with Lauren. He notes that the court sustained objections based on lack of foundation when Grace sought to testify to anticipated costs for first and last month's rent and utilities, and that the court made no specific findings regarding Grace's anticipated costs. Craig argues the court failed to properly consider the statutory factor of the "financial obligations of the spouse or domestic partner seeking maintenance."[12]

But Grace's affidavit detailing her financial needs while living in Washington was admitted as substantive evidence. And Grace testified without objection that, based on Internet research, she anticipated that her costs in Arizona would be comparable. Craig offered no contrary evidence, and the trial court is not required in awarding

---

Grace proposed at trial rather than scheduling a hearing for presentation of findings. The effect of this approach was that Craig had no other opportunity to state his objections aside from a motion to reconsider, which he did file, and in which he did sufficiently raise these claims to preserve his arguments for review.

[10] In re Marriage of Mueller, 140 Wn. App. 498, 510, 167 P.3d 568, 574 (2007). RCW 26.09.090 requires a court to consider the following when crafting a maintenance decree: (1) the financial resources of the party seeking maintenance and her ability to meet her needs independently; (2) the time necessary to train and find employment; (3) the standard of living established during the marriage; (4) the duration of the marriage; (5) the age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and (6) the ability of the spouse from whom maintenance is sought to meet his and his former spouse's needs.

[11] Mueller, 140 Wn. App. at 510.

[12] RCW 26.09.090(1)(e).

maintenance to make specific findings on each of the statutory factors.[13] The statute merely requires the court to consider the listed factors, which the court clearly did here.

Similarly, Craig assigns error because the trial court awarded maintenance before the house was sold. Without knowing the actual amount of the sale proceeds, he contends, the court could not adequately consider the statutory factor of the amount of property apportioned to the party requesting maintenance.[14]

But the statute requires only consideration of a party's "financial resources." It does not require that all property be liquidated and distributed before the court orders maintenance. The court properly ordered the sale of the house,[15] and heard the parties' testimony as to the likely amount that would be realized upon sale. Nothing in the statute requires a trial court to order property sold more quickly than economically prudent, or, conversely, to delay ordering maintenance when a sale is pending.

Craig also claims the court failed to consider the statutory factor of his ability to pay. He focuses on the court's conclusion that he is likely to continue working at two jobs notwithstanding his testimony that he would prefer to give up the firefighting job because of the increasing physical toll it takes on him as he ages. Craig relies on In re Marriage of Matthews.[16]

In Matthews, the court ordered the husband to pay nearly two-thirds of his salary

---

[13] In re Marriage of Mansour, 126 Wn. App. 1, 16, 106 P.3d 768 (2004).

[14] RCW 26.09.090(1)(a).

[15] See In re Marriage of Sedlock, 69 Wn. App. 484, 503–04, 849 P.2d 1243 (1993).

[16] 70 Wn. App. 116, 853 P.2d 462 (1993).

in lifetime maintenance, even though he had no significant personal property and the wife had had a part-time job and had received all the equity from the family home.[17] Because it appeared that the husband did not have the ability to meet his needs while meeting the obligations imposed by the trial court and because the trial court overlooked the effect of the lifetime maintenance obligation on the husband's potential disability or retirement income, a divided panel from Division III remanded the maintenance award to the trial court for reconsideration.[18]

Craig's circumstances are not analogous. Craig cites Matthews for the proposition that a trial court should not base maintenance on an inference that a former spouse will work two jobs merely because he had in the past. But the Matthews court's actual holding in that regard was that it was unreasonable for the trial court to draw such an inference when there was no evidence that the husband was currently earning income from more than one job.[19] Here, in contrast, it was undisputed that Craig had worked for many years at both his firefighting job and a second job and continued to do so at the time of trial, notwithstanding a shoulder injury he had received earlier.

Craig also challenges one sentence out of the court's page of findings regarding Grace's employability as relevant to the issue of maintenance. Along with findings about Grace's medical condition, time commitments to parenting, long absence from the work force and need for education before reentering the job market, the court

[17] Id. at 123–24.

[18] Id.

[19] Id. at 123.

discussed Lauren's health and its impact on Grace's employability. Lauren has scoliosis and receives extensive medical care. She must wear a special brace 20 hours a day, which is designed for her by a specialist in California. The court found that Lauren was involved in a number of extracurricular activities and that Grace was heavily involved in providing transportation for them. Ample evidence supports these findings. But Craig challenges the court's additional observation that "[w]hile such activities are important for all children, they are particularly important for Lauren to maintain her physical health and her emotional health given her condition."[20]

While Craig is correct that no witness specifically offered that opinion, we are satisfied that even if this commonsense observation is not strictly supported by the record, it was not central to the court's decision. Given the balance of the supported findings, it is clear the concern was Grace's competing obligations to care for a special child and retrain for the workforce, and the court would have entered the same order for maintenance.

We also reject Craig's challenge to the duration of maintenance. Contrary to his contention, 10 years of maintenance is not necessarily unreasonable following a 15-year marriage. It is also clear that the trial court did not ignore evidence about Grace's future employability following recommended training. Nor do we find the decree ambiguous as to whether the court intended that maintenance should be automatically reviewable after five years because it is clear that was not the trial court's intent.[21]

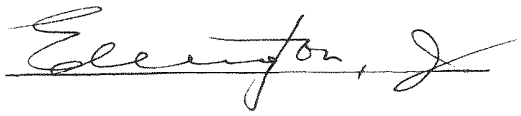
---

[20] Clerk's Papers at 142.

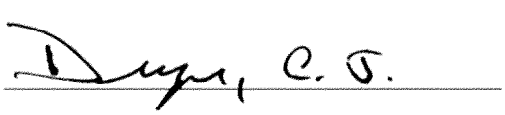
[21] Although the trial court struck language from Grace's original proposed decree that maintenance be reviewed after five years, Craig contends there is an ambiguity

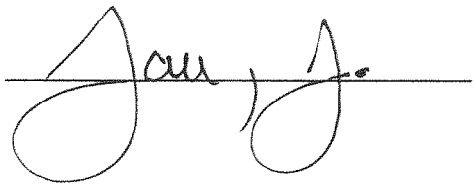
Grace requests attorney fees under RCW 26.09.140. In exercising our discretion in making such an award, we consider the parties' relative ability to pay and the arguable merit of the issues raised on appeal.[22] Considering the relevant factors, we award Grace fees on appeal, subject to her compliance with RAP 18.1, in an amount to be determined by a commissioner of this court.

We affirm.



WE CONCUR:





because the decree incorporates findings in exhibit "PF," attached to the decree, which still mention reviewability of maintenance. Clerk's Papers at 111. But that language in exhibit PF actually refers back to Grace's original proposed decree, from which the court struck the reviewability language. Moreover, it is clear that the court ordered the decreasing amount of maintenance over 10 years as a complete substitution for Grace's original proposal for $8,000 per month for 10 years to be reviewable after five. We are satisfied that Craig has identified, at most, a harmless scrivener's error in exhibit PF and that the decree is not ambiguous as to the 10-year duration of the ordered maintenance.

[22] Marriage of Muhammad, 153 Wn.2d at 807.